उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRI. A. NO. 848 OF 2002

Appellant (In jail)		MohitRam s/o Dayal Chouhan, aged – 40 yrs. R/o Rajiv Gandhi Nagar, Mittu Muda – Raigarh.
	Vs	
Respondent		State of C.G.

Present:

Mr. V.K. Sharma, counsel for the appellant.

Mr. Neeraj Mehta, P.L. for the State/respondent.

ORAL JUDGMENT

(09.08.2007)

Dhirendra Mishra, J

This appeal is directed against the judgment of conviction and order of sentence dated 17.7.2002 recorded in Sessions Trial No.26/02 by III Additional Sessions Judge, FTC, Raigarh whereby the appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo R.I. for ten years and pay a fine of Rs.1000/-, in default of payment of fine to further undergo imprisonment for three months.

2. Case of the prosecution in brief is that the prosecutrix, 75 years old lady, lodged a report in

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

30

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Police Station Kotwali, Raigarh on 25.4.1995 at about 22.35 hours to the effect that while she was going to her residence, the accused who is son of her brother-in-law met her and asked her to accompany him to his house on the promise that he shall leave her back. On her refusal, he accompanied her and took her towards the field, consumed liquor on the way and forcibly raped her and threatened her on the point of knife not to disclose this fact. She narrated the incident to her sister Chandmati, Bhurai, Shantibai and thereafter lodged the report. The lady was sent for medical examination to K.G. Hospital, Raigarh where Dr. J. Ekka (PW-5) examined her and gave her report of Ex.P/5. After completing investigation charge sheet was filed against the accused/appellant under Section 376 of the IPC.

3. Prosecution in order to establish charge against the accused examined six witnesses during trial. Thereafter, statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. However, the prosecutrix has not been examined during trial as she died during pendency of the case. Learned Additional Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(31)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused/appellant as mentioned in paragraph 1 of this judgment.

4. Learned counsel for the appellant argued that conviction of the appellant is based on the statements of Chandmati (PW-1), sister of the prosecutrix/deceased, and Bhuraibai (PW-2) as also on the statement of Dr. Smt. J. Ekka (PW-5), who examined the prosecutrix after the incident and gave her report of Ex.P/5. It is contended that from perusal of the report of Ex.P/5 it is clear that the doctor has advised to send the slides to the Forensic Science Laboratory and only thereafter her opinion regarding commission of rape could be confirmed. However, there is no report of the F.S.L. and conviction is based on the opinion of the doctor that rape might have been committed upon the prosecutrix. He further argued that PW-1 Chandmati and PW-2 Bhuraibai are the witnesses of the fact that they were informed by the prosecutrix after the incident that the accused has committed rape upon her. However, in their statements of Ex.D/1 & D/2, respectively there are omissions regarding the fact that the prosecutrix had shown her body while she narrated about the incident and this fact is missing in

(53)

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the statement of witness Chandmati. Similarly, the fact that the prosecutrix narrated the incident to Sheela and Manjulata is also missing from the diary statement of Ex.D/2, therefore, these two witnesses are not reliable and their versions cannot be believed.

5. On the other hand, learned counsel for the State/respondent supported impugned judgment of the trial Court.

6. I have heard learned counsel for the respective parties and perused the material available on record.

7. PW-5 Dr. Smt. J. Ekka, has examined the prosecutrix on 26.4.1995 and on external examination she noticed an abrasion over right armpit near 10th rib, she was complaining pain, there was dry blood present around it. On internal examination she had observed that blood clots were present over the pubic hair, blood was oozing from vagina, there was a lacerated wound in the private parts in 6 O'clock position, fresh blood was oozing and she was complaining pain on touching. She was also complaining pain when fingers were inserted into her vagina and blood was oozing from uterus. The doctor opined that it appears that the lady was raped,

GRPRJ — FS/246— 2/2007 — 50,000.

मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

however, she advised chemical examination for confirmation. The prosecutrix was admitted in the hospital for treatment as blood was oozing. In the cross-examination she has further stated that the injuries were fresh in nature though she has not stated the duration but she has categorically opined that the internal injuries present over vagina of the prosecutrix were not possible as a result of fall.

8. PW-1 Chandmati has also stated that immediately after the incident the prosecutrix had narrated the incident to her in detail, at the time of narrating the incident she was weeping as she was raped by the accused who is of her son's age. Similar is the evidence of PW-2 Bhuraibai. The omission pointed out by the defence is trivial in nature and does not affect the veracity of the statements of these two witnesses, which is further corroborated by the allegations present in the FIR of Ex.P/4 promptly lodged by the prosecutrix herself after the incident. The version of these two witnesses is also corroborated by the medical evidence. Therefore, the cumulative effect of the evidence available on record is that the prosecution has been able to establish the guilt of the accused beyond reasonable doubt and the

GRPRJ — FS/246— 2/2007 — 50,000.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(34)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	Court below has not committed any illegality or infirmity by recording conviction of the accused/appellant on the basis of above evidence. 9. Learned counsel for the appellant argued that in the facts and circumstances of the case some lesser punishment ought to have been awarded to the appellant. However, I am unable to accept this argument also taking into consideration the fact that an old lady of 75 year, who was aunty of the appellant, was raped by the appellant after consuming liquor. 10. In the result, the appeal being devoid of substance is liable to be dismissed and is accordingly, dismissed. Sd/- **DHIRENDRA MISHRA** **Judge**	